

**DEPARTMENT OF SOCIAL SERVICES**

744 P Street, Sacramento, California 95814



December 22, 1999

ALL COUNTY INFORMATION NOTICE NO. I-99-99

TO: ALL COUNTY WELFARE DIRECTORS  
ALL COUNTY IHSS OFFICES  
ALL IHSS PROGRAM MANAGERS  
ALL COUNTY COUNSELS

**REASON FOR THIS TRANSMITTAL**

- ☐ State Law Change
- ☐ Federal Law or Regulation Change
- ☒ Court Order or Settlement Agreement
- ☐ Clarification Requested by One or More Counties
- ☐ Initiated by CDSS

**SUBJECT: TYLER V. ANDERSON SETTLEMENT AGREEMENT**

The purpose of this All-County Information Notice (ACIN) is to provide counties with initial information regarding the settlement agreement in the Tyler v. Anderson lawsuit. Enclosed is a copy of the judgment containing the settlement agreement for your information.

**BACKGROUND**

Tyler v. Anderson is a class action lawsuit filed in 1993. The case involves the Department's policy of denying range of motion (ROM) exercises to In-Home Supportive Services (IHSS) recipients as paramedical services from June 17, 1990 through March 31, 1993. Since April 1, 1993, IHSS recipients have received ROM exercises as a personal care service. However, the settlement agreement extended the claimable period for another year, until March 31, 1994, because recipient re-evaluations may not have taken place for up to 12 months after the reinstatement of ROM services. The settlement agreement was approved by the Sacramento County Superior Court, in a judgment on January 22, 1999.

This settlement applies to recipients/applicants/providers of IHSS who were denied payment for ROM exercises prescribed and rendered during the specified time period (except in Amador, Calaveras, Fresno, Los Angeles, San Bernardino and Tehama counties who continued to provide ROM services). Under the terms of the settlement agreement, class members must be notified and are then given a six-month time frame to file a claim. Claimants with a valid claim will receive retroactive payments and interest. We believe the number of valid Tyler v. Anderson claimants will be relatively small in comparison to the total IHSS population.

## **COUNTY ROLE**

The Department has established a new Unit to handle all of the provisions of the Tyler v. Anderson settlement agreement. The counties' role in this process will be minimal, as the Department has assumed the primary responsibility for implementing the settlement agreement and will centrally process claims. However, counties may be asked to provide case file information for some of the claims.

Although Amador, Calaveras, Fresno, Los Angeles, San Bernardino and Tehama counties continued to provide ROM services during the noted time period, it is possible that these counties may have residents that submit claim forms. Therefore, it will be necessary for these counties to have some familiarity with the Tyler claims process.

## **CLAIMS PROCESS**

It is anticipated that the claims process will begin in the Spring of 2000. Counties will be notified of specific implementation procedures through an All-County Letter when the emergency regulations and forms are finalized, and the claims processing details are determined. Final emergency regulations and instructions will also be issued prior to the initiation of the claims period, and counties will be asked for input prior to their release.

## **COUNTY ASSISTANCE**

The Tyler Unit will be working with the County Welfare Directors Association, Adult Services Committee to form a workgroup comprised of state and county staff representatives, to discuss the implementation procedures and processes. If you are interested in participating, please contact your Regional Chairperson.

In addition, we would like counties to provide us with a contact person to serve as a liaison to facilitate timely implementation and to ensure consistency in claims processing. Enclosed is a contact sheet for counties to fill out. This contact sheet should be completed and faxed to (916) 229-0337 to the attention of Lori Starnes by January 5, 2000.

If you have any questions related to this ACIN or would like to discuss the implementation of the settlement agreement, please contact Lori Starnes or Randy Brown, Manager of the Tyler Unit at (916) 229-4000.

Sincerely,

*Original Signed By*  
*Donna L. Mandelstam on December 22, 1999*  
DONNA L. MANDELSTAM  
Deputy Director  
Disability and Adult Programs Division

Enclosures

**TYLER LAWSUIT COUNTY CONTACT SHEET**

Please Return Form by: **January 5, 2000**

To: Lori Starnes

Fax Number: (916) 229-0337

County: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**COUNTY CONTACT:**

Name: \_\_\_\_\_

Classification: \_\_\_\_\_

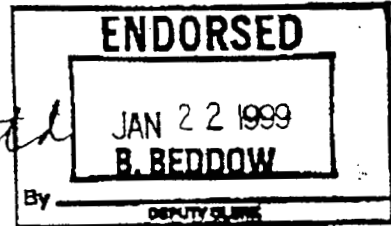
Phone Number: \_\_\_\_\_

FAX Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_



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SUPERIOR COURT OF CALIFORNIA

SACRAMENTO COUNTY

10 KATHRYN E. TYLER, GARY TYLER, ) CASE NO. 376230  
11 JACK D. TYLER, a minor, and )  
12 MATHEW L. TYLER, a minor, both )  
13 minors by their parents and )  
14 guardians ad litem, KATHRYN E. ) JUDGMENT  
15 TYLER and JACK TYLER, )  
16 individually and on behalf of )  
17 other similarly situated, )  
18 Plaintiffs-Petitioners, )  
19 V. )  
20 ELOISE ANDERSON, Director, State )  
21 Department of Social Services, )  
22 and STATE DEPARTMENT OF SOCIAL )  
23 SERVICES, )  
24 Defendants-Respondents. )

25 The parties' Joint Motion To Approve Class Action  
26 Settlement And Entry Of Judgment was heard on January 22, 1999 at  
27 1:30 p.m. in Department 33, Judge Lloyd G. Connelly, Judge  
28 presiding. Charles Wolfinger appeared for plaintiffs, and Mateo  
Munoz, Deputy Attorney General, appeared for defendants.

This court, having considered the pleadings and papers on  
file herein and the argument of counsel,

1           HEREBY ORDERS, ADJUDGES AND DECREES:

2    I.   DECLARATORY JUDGMENT

3           This court makes the following declaration of the  
4 parties' rights and duties under Code of Civil Procedure section  
5 1060:

6           A.   Defendants' Violations Of State Laws

7           Defendants violated the rights of plaintiffs and the  
8 certified class defined as "...all applicants for or recipients  
9 of In-Home Supportive Services and their providers, who since  
10 June 17, 1990, have been denied range of motion exercises under  
11 the IHSS program solely because of defendants' policy prohibiting  
12 them as a paramedical service under Welfare and Institutions Code  
13 section 12300.1, before it was amended by Assembly Bill 1773,  
14 Stats.1992, c.939" (Order. . . Granting Plaintiffs' Motion For  
15 Class Certification, filed May 23, 1994) (collectively "certified  
16 class") as follows. Defendants' enforcement of their official  
17 policy prohibiting range of motion exercises as a paramedical  
18 service under the In-Home Supportive Services Program (IHSS) from  
19 about 1990 to 1993 (ROM prohibition policy) violated Welfare and  
20 Institutions Code section 12300.1 (before it was amended by  
21 Assembly Bill 1773, Stats.1992, c.939), because that section gave  
22 defendants no discretion to prohibit range of motion exercises  
23 when ordered by a licensed health care professional.

24           B.   Defendants' Duty To Pay Retroactive Benefits

25           1.   As a result of the violations of state laws,  
26 defendants have a duty to pay plaintiffs and the class  
27 retroactive benefits as follows:  
28

1 a. all IHSS compensation for range of motion  
2 exercises provided that was denied pursuant to their ROM  
3 prohibition policy from June 17, 1990 through March 31, 1994;

4 b. prejudgment interest at the legal rate of 7% on  
5 the amount of benefits from the date of the first payment was  
6 originally owed but for defendants' ROM prohibition policy to the  
7 date of this judgment; and

8 c. postjudgment interest at the legal rate of 7% on  
9 the amount of benefits from the date of this judgment until paid.

10 2. Eligibility conditions for retroactive benefits:

11 A class member is eligible for retroactive benefits based  
12 on the ROM prohibition policy based on all the following:

13 a. At any time from June 17, 1990 through March 31,  
14 1994, a doctor prescribed range of motion exercises for an IHSS  
15 recipient or applicant, and

16 b. At any time from June 17, 1990 through March 31,  
17 1994, a provider performed range of motion exercises prescribed  
18 for an IHSS recipient or applicant and was not paid therefor.

19  
20 II. WRIT OF MANDATE TO PAY RETROACTIVE BENEFITS

21 Let a writ of mandate issue pursuant to Code of Civil  
22 Procedure section 1085 on behalf of plaintiffs and the certified  
23 class, commanding defendant Anderson, her successors in office,  
24 defendant State Department of Social Services (DSS), its  
25 officers, employees, agents, representatives, and all other  
26 persons acting in their behalf or subject to their control or  
27 supervision (collectively "defendants"), including their  
28

1 statutory agents, the board of supervisions of each county of  
2 California and the directors of each county welfare department to  
3 (collectively "county") to comply with their mandatory duties as  
4 follows:

5 A. Develop An Explanatory Notice And A Claim Form

6 1. Develop an explanatory notice about the right to  
7 claim retroactive benefits (notice) and a provider/recipient  
8 claim form (claim form), which are written in plain language in  
9 English and Spanish.

10 2. Develop a poster size notice not less than 17" x 22"  
11 in size (public notice), with the contents of the notice and in a  
12 format that attracts attention when posted in a public space.

13 B. Identify Class Members

14 1. Identify IHSS recipient class members and their  
15 providers and their last known addresses:

16 a. Identify all IHSS recipients and providers from  
17 June 17, 1990 through March 31, 1994 in all counties except in  
18 Los Angeles, Fresno, San Bernardino, Amador, Tehama and Calaveras  
19 Counties.

20 b. Determine the current mailing address from the  
21 IHSS payrolling system for all members currently receiving IHSS.

22 c. Determine any updated mailing address for those  
23 recipients and providers not in the current IHSS payrolling  
24 system, by using Medi-Cal records or if unavailable, by using the  
25 address matching services of the Franchise Tax Board.

1           d. Obtain a list of all persons and their updated  
2 addresses whose notices are returned in order to allow review by  
3 defendants and class counsel.

4           2. Identify IHSS applicant class members and their  
5 providers:

6           a. Develop a list of all county welfare offices and  
7 organizations and agencies designated by plaintiffs including  
8 regional centers, independent living centers, areas boards, and  
9 legal aid programs for mailing poster notices and regular notices  
10 and claim forms.

11       C. Notify Class Members About Retroactive Benefits

12           1. Mail notices and claim forms and the public notices  
13 to all persons and others identified in paragraph II.B above.

14           2. Mail sufficient numbers of public notices, plus a  
15 copy of the notice and claim form to:

16           a. Each county welfare department with instructions  
17 to display the posters in prominent locations in every office  
18 having contact with the public for six (6) month period beginning  
19 with the effective date of the claim period as contained in the  
20 regulations.

21           b. All organizations and groups on a list supplied  
22 by plaintiffs' counsel with a letter request to display the  
23 posters in a prominent location for six (6) month period  
24 beginning with the effective date of the claim period as  
25 contained in the regulations, and with camera ready copies of the  
26 notice of rights and claim form.



1           3. Mail all notices in the week before the start of the  
2 claiming period.

3           4. Returned notices will be retained for review by  
4 defendants and class counsel for 60 days after the close of the  
5 claim period.

6           D. Determine Eligibility For Retroactive Benefits

7           1. Defendants have the discretion and reserve the right  
8 to process claims centrally or in affected individual counties  
9 using county staff.

10           2. The claim period shall be six calendar months  
11 beginning in the month after the effective date of the  
12 regulations implementing this judgment under paragraph III.A.

13           3. Proof of eligibility conditions:

14           a. A doctor's statement that an IHSS recipient or  
15 applicant was prescribed range of motion exercises and the hours  
16 of such exercises prescribed monthly during the relevant time  
17 period. The doctor signing the statement need not be the doctor  
18 prescribing the range of motion exercises, but must base the  
19 statement on the medical records of the recipient or applicant.

20           b. A recipient, applicant or provider's statement,  
21 signed under penalty of perjury, that range of motion exercises  
22 were provided during the relevant time period and the hours  
23 provided monthly.

24           c. An IHSS applicant must also submit proof of  
25 meeting all other categorical and financial eligibility  
26 conditions for the receipt of IHSS during the relevant period and  
27  
28

1 a statement indicating filing an application for IHSS benefits  
2 during the relevant period.

3 4. Computation of amount of retroactive benefits

4 a. The amount of hours authorized for ROM each month  
5 multiplied by the county's applicable individual provider hourly  
6 wage during each month for which benefits are claimed.

7 b. The amount of hours for range of motion  
8 retroactive benefits may not exceed the applicable statutory  
9 grant maximum. The applicable statutory grant maximum shall be  
10 based on the additional monthly hours of range of motion  
11 exercises allowed during each month of the retroactive period.

12 c. A share of cost will be calculated for applicants  
13 utilizing the current SSI/SSP payment standards in computing the  
14 amount of retroactive benefits due.

15 5. As appropriate, issue regulations and other  
16 implementation plans (e.g., CMIPS instructions, automated notice  
17 of action messages) concerning claim processing, which must  
18 include:

19 a. Limit eligibility information for retroactive  
20 benefits from class members to the claim form.

21 b. Use existing case files to establish all IHSS  
22 status and income eligibility conditions.

23 c. Provide adverse information in notice of action  
24 with an opportunity to submit additional information.

25 E. Issue Notice Of Action

26 Issue and mail a Notice of Action on each claim as  
27 follows:

1           1. Within sixty (60) days after receiving the claim  
2 form.

3           2. For every month retroactive benefits are claimed:

4               a. the computation of the amount due and prejudgment  
5 and postjudgment interest; or

6               b. reasons and facts why no amount is due or less  
7 due than claimed, including a statement of what additional  
8 information is needed or adverse information, and that the  
9 claimant must provide it within forty-five (45) days from the  
10 date of the Notice of Action.

11           3. The total retroactive benefits and prejudgment and  
12 postjudgment interest.

13           4. A statement about the taxability of wages,  
14 withholding taxes, and deeming for SSI recipients whose providers  
15 are currently spouses or parents of minor children recipients.

16           5. A statement about the right to a state hearing and  
17 the procedures for obtaining one.

18       F. Issue Payment

19           1. Mail payment on or before the 10th of the month or  
20 hold them for mailing on or before the 10th of the following  
21 month.

22           2. Except as extended by subparagraph II.F.1, mail  
23 payment within 30 days after the date of a notice of action for  
24 payment is mailed to the claimant.

1     III.   WRIT OF MANDATE ON COMPLIANCE AND OTHER ISSUES

2             Let a writ of mandate issue pursuant to Code of Civil  
3     Procedure section 1085 on behalf of plaintiffs and the certified  
4     class and commanding defendants to take the following actions:

5             A.   Issue Regulations

6                 1.   Develop regulations, notices, claim forms and other  
7     implementation procedures in consultation with class counsel.

8                 2.   Provide plaintiffs' counsel with the defendants'  
9     final text of proposed regulations, notice, claim forms and  
10    public notice no later than 45 days before filing the regulations  
11    with the Office of Administrative Law.

12                3.   DSS shall use its best efforts to issue emergency  
13    regulations to implement this judgment.

14             B.   Issue Reports

15                Send class counsel the following:

16                1.   Bimonthly status report on all actions taken on the  
17    judgment and include basic implementation records, including  
18    contracts with all agencies. The first status report is due  
19    monthly.

20                2.   Identification: number of recipient and provider  
21    class members identified from IHSS payrolling system; number with  
22    current addresses; number updated through Medi-Cal; number  
23    updated through Franchise Tax Board. The report is due one month  
24    after the date of mailing the notices.

25                3.   Monthly claim reports by county with the number of  
26    claims received, approved, denied, pending, and amount of wages  
27    and interest paid, and number of claims sent to individual class  
28

1 members and date(s) of mailing; number returned undelivered for  
2 those with mailing addresses from IHSS payrolling system, Medi-  
3 Cal, and Franchise Tax Board. The first report is due by the  
4 10th of the second month of the claiming period.

5 4. Returned notices: The parties will explore the  
6 feasibility of remailing returned notices.

7 5. Defendants' obligation to issue reports shall  
8 terminate at the point there are no pending claims, including  
9 fair hearings.

10 C. Produce Implementation Records

11 1. On request and within a reasonable period of time,  
12 allow plaintiffs and their counsel or agents to inspect any and  
13 all records used by defendants in implementing this judgment.

14 2. Without request and monthly, send plaintiffs' counsel  
15 all fair hearing decisions and related agency position  
16 statements.

17 D. Extend Time For Claiming Attorney Fees And Costs

18 Plaintiff may file any motion for attorney fees and costs  
19 for work up to and including the date of the judgment within  
20 ninety days of the date of this judgment, and this judgment  
21 modifies and extends any and all statutory time limits for filing  
22 cost memoranda and fee motions, including under Code Civil  
23 Procedure section 1033 and California Rules of Court 870(b)(3)  
24 and 870.1(b).

1 E. Retain Jurisdiction


2 As provided for by current California law, the court  
3 retains jurisdiction over this case to insure compliance with the  
4 judgment and to make such further orders thereon.

5  
6 Dated: JAN 22 1999

LLOYD G. CONNELLY

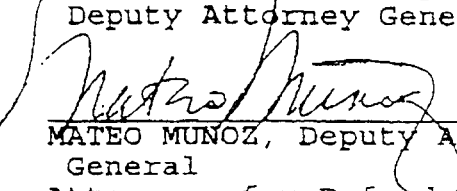
JUDGE OF THE SUPERIOR COURT

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9 Approved as to form  
10 and content

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15 CHARLES WOLFINGER  
Attorney for Plaintiffs

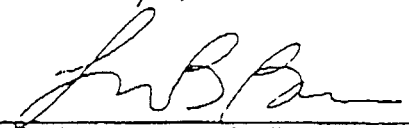
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17 Dated: 1/7/99

BILL LOCKYER, Attorney  
General, State of California  
FRANK S. FURTEK, Supervising  
Deputy Attorney General

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20 MATEO MUNOZ, Deputy Attorney  
General

Attorneys for Defendants

21  
22 Dated: 1/8/99

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25 LAWRENCE B. BOLTON  
26 Deputy Director, Legal Division  
27 California State Department of  
28 Social Services

Dated: 1/8/99

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